

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 19, 2009

- D054642 In re Marriage of Pearce**
The order is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McIntyre, J.
- D055181 People v. Glasby**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.
- D056021 In re Irvin on Habeas Corpus**
The petition is denied.
- D052921 Cephas v. City of San Diego et al.**
Judgment affirmed. Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.
- D055858 In re Rider on Habeas Corpus**
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk: D. Moore

- D053104 People v. Almieiro**
Cause called on merits. Michael Satris, Esq. argued for appellant.
Theodore M. Cropley, Deputy Attorney General, argued for respondent.
Mr. Satris replied. Cause submitted.
- D053466 Woodbury v. Seacrest Villas Homeowners Association et al.**
Cause called on merits. Mary A. Lehman, Esq. argued for appellant.
Debra Ann Akiyama, Esq. argued for respondent. Due to technical difficulties,
appellant is granted permission to file a rebuttal, limited to two pages. Cause to be
submitted upon receipt of the rebuttal.
- D053234 National Continental Insurance Company v. National Union Fire Insurance
Company of Pittsburgh**
Cause called on merits. Curt Charles Cutting, Esq. argued for appellant.
Christopher Paul Wesierski, Esq. argued for respondent. Mr. Cutting replied.
Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 19, 2009 (Continued)

Court recessed at 9:59 a.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Joan Irion

D053973 People v. Hastings

Cause called on merits. Carey Dawn Gorden, Esq. argued for appellant.
Ramona Noursamadi, Deputy Attorney General, argued for respondent.
Ms. Gorden replied. Cause submitted.

D052217 People v. Suarez

Cause called on merits. Laura G. Schaefer, Esq. argued for appellant.
Theodore M. Cropley, Deputy Attorney General, argued for respondent.
Ms. Schaefer replied. Cause submitted.

Court recessed at 10:47 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. Moore

D054962 People v. Ochoa

Cause called on merits. Michael B. McPartland, Esq. argued for appellant.
Robin Derman, Deputy Attorney General, argued for respondent. Cause submitted.

D053647 In re L.D., a juvenile

Cause called on merits. Melissa J. Schmitt, Esq. argued for appellant.
Susan Miller, Deputy Attorney General, argued for respondent. Ms. Schmitt
replied. Cause submitted.

D055068 People v. Maikhio

Cause called on merits. Monica Tiana, Deputy City Attorney, argued for appellant.
Gary Nichols, Deputy Public Defender, argued for respondent. Ms. Tiana replied.
Cause submitted.

Court recessed at 2:31 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Gilbert Nares and Alex McDonald

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 19, 2009 (Continued)

D054792 In re Olson on Habeas Corpus

Matter called on merits. Kathleen Frey, Deputy Attorney General, argued for appellant. Matthew Braner, Deputy Public Defender, argued for respondent. Ms. Frey replied. Matter submitted.

Court recessed at 3:09 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and Joan Irion

D052523 Davis v. Wright

Cause called on merits. Matthew Tobias Surlin, Esq. argued for appellant. Robert Steele, Esq. argued for respondent. Mr. Surlin replied.

Court recessed at 3:41 p.m. until Tuesday, October 20, 2009 at 9:00 a.m.

D055930 In re Rogers-Wright

The petition is denied.

D055796 In re Sherman on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 20, 2009

D053256 Casteen Construction, Inc. v. Farwest American Enterprises

The trial court's award of delay damages to Casteen on its quantum meruit claim against Farwest is reversed. The trial court's award of damages to Casteen for the costs of replacement trusses on its quantum meruit claim against Farwest is affirmed. The trial court's determination that Casteen is entitled to recover delay damages on its release bond claims is reversed. The trial court's determination that Casteen is entitled to recover against defendants damages for the replacement of trusses in the Project on its release bond claims is affirmed. The matter is remanded to the trial court with directions to recalculate the amount of damages to which Casteen is entitled pursuant to its quantum meruit and release bond claims, in accordance with our directions in parts III.A. and III.B., *ante*, and for any further necessary proceedings. Each party is to bear its own costs on appeal.
Aaron, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D055138 People v. Mercado et al.

As to Schumm, the matter is remanded to the superior court to amend the abstract of judgment to strike his prior prison convictions. As to Mercado, the matter is remanded to the superior court to amend the abstract of judgment to stay the criminal street gang enhancement associated with the robbery conviction, to impose consecutive sentences for his 1998 prior serious felony conviction enhancement and one of his 1999 prior serious felony conviction enhancements, and to strike Mercado's prior prison convictions. After the superior court has amended the abstract of judgments, it is directed to forward copies of them to the Department of Corrections and Rehabilitation. In all other respects the judgments are affirmed.
McConnell, P.J.; We Concur: McDonald, J., Aaron, J.

D053429 Garcia v. City of San Diego et al.

The judgment is affirmed. Plaintiffs are to bear costs on appeal.
Aaron, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D054073 People v. Rinestine

The judgment is affirmed.
O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

D054955 People v. Lyons

The judgment is affirmed.
Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 20, 2009 (Continued)

D053807 People v. Hernandez

The court heard oral argument in this case on October 13, 2009. The parties are directed to submit supplemental letter briefs addressing the following question:

When pleading a special allegation under Penal Code section 667.61, subdivisions (a) and (d)(4), must the prosecution allege that defendant committed burglary with the specific intent to commit a *specific* sexual offense listed in subdivision (c), or may the prosecution allege he committed burglary with the specific intent to commit any sexual offense listed in subdivision (c)?

Hernandez is directed to file his supplemental letter brief on or before October 30, 2009. The Attorney General is directed to file his supplemental brief on or before November 11, 2009.

The October 13, 2009 submission is vacated. The case shall be resubmitted upon completion of supplemental briefing. (Cal. Rules of Court, rule 8.256(e).)

D054111 People v. Heffernan

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Aaron, J.

D055813 In re Marsh on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Gilbert Nares
Clerk: D. Moore

D054457 Miller v. Miller

Cause called on merits. Paul E. Gavin, Esq. argued for appellant. Jaime Kunce, Esq. was present in oral argument with Mr. Gavin, but did not argue. Patrick L. McCrary, Esq. argued for respondent. Mr. Gavin replied. Cause submitted.

Court recessed at 9:15 a.m. to change panels.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Alex McDonald

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 20, 2009 (Continued)

D053644 Kaye v. Board of Trustees of the San Diego Public Law Library
Cause called on merits. Michael Kaye argued as appellant in pro per.
Margaret Chandler Bell, Esq. argued for respondent. Mr. Kaye replied.
Cause submitted.

Court recessed at 9:47 a.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Gilbert Nares

D054112 People v. Wood

D055201 In re Wood on Habeas Corpus

Cause called on merits. Allen R. Bloom, Esq. argued for appellant.
James Flaherty, III, Deputy Attorney General, argued for respondent.
Mr. Bloom replied. Cause submitted on the appeal only, D054112.

D053903 Anderson v. Jew et al.

Cause called on merits. William Anderson argued as appellant in pro per.
Gregory M. Garrison, Esq. was present in oral argument for respondent, but had
nothing to add. Cause submitted.

D054017 Kenny et al. v. North County Ford, Inc., et al.

Cause called on merits. Michael W. Quade, Esq. argued for appellant.
Robert Shaughnessy, Esq. argued for respondent. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Joan Irion

Clerk: D. Moore

D052773 Hays et al. v. Murray et al.

Cause called on merits. John Morris, Esq. argued for appellant.
James J. Moneer, Esq. argued for respondent. Mr. Morris replied.
Cause submitted.

Court recessed at 2:04 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 20, 2009 (Continued)

D054717 Farahani v. San Diego Community College District et al.
Cause called on merits. Richard Erik Romero, Esq. argued for appellant.
Ken Baisch, Esq. argued for respondent. Mr. Romero replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members.

New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D051905 The Gifted Schools et al. v. Grahovac Construction Company
Cause called on merits. Stephen H. McAvoy, Esq. argued for appellant, The Gifted
Schools and etc. David A. Niddrie, Esq. argued for appellant, Grahovac
Construction Company. B.J. Haeck, Esq. argued for respondent, P. Teixeira
Construction. Ms. McAvoy replied. Cause submitted.

Court recessed at 3:09 p.m. until Thursday, October 22, 2009 at 9:00 a.m.

**D056012 Sempra Generation v. The Superior Court of San Diego County/Department of
Water Resources**
The petition is denied.

D055932 In re Russell on Habeas Corpus
The petition is denied.

D055702 In re Burton on Habeas Corpus
The petition is denied.

D056050 Joiner v. The Superior Court of San Diego County/People
The petition is denied in that there is a remedy by way of appeal.

D055859 In re Black on Habeas Corpus
The petition is denied.

D055790 In re Brown on Habeas Corpus
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 21, 2009

Court Furlough Day

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 22, 2009

- D056054 Mims v. Superior Court of San Diego County/People**
The petition for writ of mandate, request for stay, and request for appointment of counsel have been read and considered by Presiding Justice McConnell and Associate Justices Haller and Aaron. The petition is denied in that there is an adequate remedy by way of appeal. The request for appointment of counsel is denied. The court on its own motion orders that the reporter's transcript of *Marsden* hearing attached to the petition be kept confidential under rule 8.328(b)(1) of the California Rules of Court.
- D053243 People v. Moore**
The one-year prison prior enhancements are stricken. The trial court is ordered to amend the abstract of judgment accordingly and forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.
Nares, J.; We Concur: Benke, Acting P.J., McDonald, J.
- D053054 International Poly Bag, Inc. v. Liu/International Poly Bag and International Polyethylene Products, Inc.,**
We reverse the judgment on the cross-complaint and the attorney fees and cost award, and remand for proceedings consistent with this opinion. We affirm the judgment in all other respects. The parties to pay their own costs on appeal.
Haller, J.; We Concur: Nares, Acting P.J., McIntyre, J.
- D055628 In re Vanessa B., a Juvenile**
The appeal is dismissed. Nares, Acting P.J.; Haller, J., Irion, J.
- D056046 In re Adrade on Habeas Corpus**
The petition is denied.
- D055947 In re Lara on Habeas Corpus**
The petition is denied.
- D055351 People v. Peard**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Patricia Benke and Gilbert Nares
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 22, 2009 (Continued)

D053135 Cade et al. v. Nelson et al.

Cause called on merits. Stephen P. Oggel, Esq. argued for appellant.
L. B. Chip Edelson, Esq. argued for respondent. Mr. Oggel replied.
Cause submitted.

D052978 People v. Archer

Cause called on merits. Russell S. Babcock, Esq. argued for appellant.
Meredith Strong, Deputy Attorney General, argued for respondent. Mr. Babcock
replied. Cause submitted.

D055498 People v. Jeffrey Moore

Cause called on merits. Rebecca Marie Madrid, Deputy District Attorney, argued
for appellant. Michael Goldfeder, Esq. argued for respondent. Ms. Madrid replied.
Cause submitted.

Court recessed at 9:42 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and
 The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

Clerk: D. Moore

D053636 Garland v. Garland

Cause called on merits. Mark E. Garland argued as appellant in pro per.
Cause submitted.

D053851 Boyd v. Marshall

Cause called on merits. Frank W. Boyd argued as appellant in pro per.
Stephen Temko, Esq. argued for respondent. Mr. Boyd replied. Cause submitted.

D053544 People v. Willis

Cause called on merits. Nicholas DePento, Esq. argued for appellant.
Elizabeth Hartwig, Deputy Attorney General, argued for respondent.
Cause submitted.

D054251 Siry v. Rubin

Cause called on merits. Allison Jones, Esq. argued for appellant.
Jessica Marie Peterson, Esq. argued for respondent. Ms. Jones replied.
Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 22, 2009 (Continued)

D053082 People v. Chillis

Cause called on merits. Diane Nichols, Esq. argued for appellant. Eric Swenson, Deputy Attorney General, argued for respondent. Ms. Nichols replied. Cause submitted.

Court recessed at 3:03 p.m. to change panel members.

New panel members: The Honorable Judith Haller, Acting Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D053658 South Bay Rod and Gun Club v. Dashiell

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

Court recessed at 4:00 p.m. until Friday, October 23, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2009

- D053973 People v. Hastings**
The judgment is affirmed. Huffman, Acting P.J., We Concur: McIntyre, J., Irion, J.
- D054244 People v. Cole**
The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Haller, J.
- D052773 Hayes et al. v. Murray et al.**
The order is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.
- D053566 People v. Grant**
The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., O'Rourke, J.
- D050667 Pauma Band of Luiseno Mission Indians v. Harrah's Operating Company, Inc., et al.**
The petition for rehearing is denied.
- D055502 People v. Sams**
The judgment is modified to provide that a term of 25 years to life for count 3 is imposed, but stayed pursuant to section 654, and the two section 667.5, subdivision (b), prior prison term allegations are stricken. As modified, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment reflecting the modifications and shall forward a copy to the Department of Corrections and Rehabilitation. McDonald, J.; We Concur: McConnell, P.J., Aaron, J.
- D054355 Pineda v. Williams-Sonoma Stores, Inc.**
The opinion filed October 8, 2009, is ordered certified for publication.
- D054745 In re Kady G., a Juvenile**
The orders are affirmed. Benke, J.; We Concur: McConnell, P.J., Irion, J.
- D055860 In re Pritchett on Habeas Corpus**
The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2009 (Continued)

D053089 Jameson v. Desta

Cause called on merits. Barry S. Jameson argued as appellant in pro per. Lisa Willhelm Cooney, Esq. argued for respondent. Mr. Jameson replied. Cause submitted.

Court recessed at 9:32 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and
The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D054295 Smith v. Hance et al.

Cause called on merits. John B. Barriage, Esq. argued for appellant. Jennifer Leslie Hance argued as respondent in pro per. Mr. Barriage replied. Cause submitted.

D053741 Ferrey Hasso-Najm

Cause called on merits. Jennifer Hasso, Esq. argued for appellant. Amanda Benedict, Esq. argued for respondent. Ms. Hasso replied. Cause submitted.

D054937 In re J.D., a juvenile

Cause called on merits. Hassan Gorguinpour, Esq. argued for appellant. Katharine Bird, Deputy County Counsel, argued for respondent. Kathleen M. Mallinger, Esq. argued for the minor. Mr. Gorguinour replied. Cause submitted.

D053053 Wiley et al. v. Yihua International Group

Cause called on merits. Kevin Cauley, Esq. argued for appellant. Craig S. Hubble, Esq. argued for respondent. Mr. Cauley replied. Cause submitted.

Court recessed at 2:53 p.m. until Monday, October 26, 2009 at 9:00 a.m.

D055178 People v. Saunders

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2009 (Continued)

- D055985 In re Cortez on Habeas Corpus**
The petition is denied.
- D055986 In re Cortez on Habeas Corpus**
The petition is denied.
- D055895 Battle v. Superior Court of San Diego County/People**
The court received petitioner's request to dismiss the petition on October 22, 2009.
The request is granted. The petition filed on September 15, 2009, is dismissed.
- D055799 In re Brown II on Habeas Corpus**
The petition is denied.
- D056009 O'Sullivan v. Superior Court of San Diego County/City of San Diego et al.**
The petition is denied.